



**In the
Supreme Court of the United States**

OCTOBER TERM, 1969

No. 1484

ORGANIZATION FOR A BETTER AUSTIN, et al.,
Petitioners,

VS.

JEROME M. KEEFE,
Respondent.

On Petition for Writ of Certiorari to the Appellate Court
of Illinois, First District.

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Jerome M. Keefe respectfully suggests that the judgment of the Appellate Court of Illinois, First District, does not warrant review on writ of certiorari. The decision of the Appellate Court does not involve novel questions or decide an issue contrary to prior decisions of this Court. The Appellate Court of Illinois properly sustained an injunction prohibiting petitioners' unwarranted intrusion upon respondent's right of privacy. The First Amendment is not a license authorizing unreasonable harrassment of home, family and neighbors.

QUESTION PRESENTED FOR REVIEW

Whether the Appellate Court of Illinois struck a proper balance between petitioners' First Amendment rights and respondent's right of privacy.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated . . . "

STATEMENT OF FACTS

Respondent Jerry Keefe is a real estate broker whose office is in the Austin neighborhood of Chicago and whose residence is in Westchester, Illinois, approximately seven miles distant. (A. 13) The Austin neighborhood is undergoing rapid racial change. (A. 17) Petitioner Organization for a Better Austin (OBA) is a neighborhood organization which objects to door to door solicitation of real estate listings in the community. (Add'l. A. 9, 10) Mr. Keefe on occasion distributed door to door his business card which stated, "We invite your listing. We have prospective buyers for income property and residential property in the Austin area." and gave his name, business address and business telephone number. (Add'l A. 6)

In order to induce Mr. Keefe to "voluntarily" agree to cease all solicitation in the Austin area, members of the OBA went to Westchester and distributed handbills among his neighbors, at his church and at his local shopping center urging members of the community to call him and tell him to sign a non-solicitation agreement. (A. 6) His home address and telephone number were given and the handbills stated, "When he signs, we stay in Austin",

and "When he signs the agreement, we stop coming to Westchester", and similar legends. (Add'l A. 14, 15) OBA members were also actively engaged on numerous occasions in picketing and distributing handbills highly critical of Mr. Keefe at his place of business in Austin. (Add'l A. 4) The Appellate Court of Illinois held that the trial court properly refused to enjoin the OBA activities around Mr. Keefe's place of business but did sustain the finding of the chancellor that the OBA's activities in the community of Westchester constituted an invasion of Mr. Keefe's right of privacy. The temporary injunction order does not prohibit the OBA from communicating with Westchester residents by telephone, letter or newspaper advertising. It does prohibit their physical presence in the community either passing out leaflets or picketing until a full hearing on the merits of the case was concluded. (A. 11)

ARGUMENT

The Decision Of The Appellate Court of Illinois Is Consistent With Prior Decisions Of This Court. Protecting Respondent's Right Of Privacy Did Not Deny Petitioners' Freedom of Speech.

Neither the First Amendment right of free speech nor the right of privacy, which derives both from common law and the Fourth Amendment, are absolute. Indeed, this Court has had occasion during the present term to strike a balance between these rights. In *Rowan d/b/a American Book Service v. United States Post Office Department*, U.S., 38 U.S. Law Week 4343 (Doc. No. 399, May 4, 1970) certain mail order houses and mailing list brokers challenged the constitutionality of an Act of Congress which permits a householder to have his name removed from mailing lists used to sell matters which the addressee in his sole discretion believes to be erotically arousing or sexually provocative, arguing that the statute violated their constitutional right to communicate. In sustaining the constitutionality of the statute, Mr. Chief Justice Burger stated as follows (p. 4345):

"Without doubt, the public postal system is an indispensable adjunct of every civilized society and communication is imperative to a healthy social order. But the right of every person 'to be let alone' must be placed in the scales with the right of others to communicate."

The OBA argues that the First Amendment gives them the unrestricted right to be physically present in Mr. Keefe's home community distributing handbills until he

capitulates to their demands. Prior decisions of this Court do not establish such a right.

The Court has recognized that picketing, although a protected First Amendment activity, is not entitled to the same unfettered freedom that newspapers and periodicals enjoy. *Hughes v. Superior Court*, 339 U.S. 460 (1950). The physical presence of pickets may create tensions and induce actions which go beyond the mere communication of ideas. *Gregory v. City of Chicago*, 394 U.S. 11, 13 (1969). The handbill distribution here is similar to picketing. Although peacefully conducted, it involved personal confrontation, particularly in the distribution of handbills at church and in the shopping center. Moreover, and most importantly, the handbills contain a thinly disguised threat of direct action against the community. The handbills start out with the legend, "Residents of Westchester Beware. . . ." and contains the statement, "If you want us to stop coming to Westchester, call Jerry Keefe . . ." (Add'l A. 14, 15) The interest of Westchester residents in the community of Austin is no different than the interest of seven million other persons in metropolitan Chicago, except for the accident of Jerry Keefe's residence there. Westchester was the target of OBA activities for a single reason. It was hoped that these activities would cause neighbors to pressure Mr. Keefe or his family into capitulating to OBA demands. The harassment of family, friends and neighbors in Mr. Keefe's home neighborhood is clearly an unreasonable interference with his right of privacy.

The temporary injunction order, which is intended to preserve the status quo pending a full hearing on the merits, enjoined the OBA from "passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois." (A. 11) It is only the physical presence of members of the OBA in

Westchester that is enjoined. They are at liberty to communicate with Mr. Keefe and his neighbors by letter, newspaper advertisement, telephone or any other form of communication which does not involve their bodily entrance into the community. The trial court struck a reasonable balance between the OBA's right to communicate and Mr. Keefe's right to privacy and repose in the area of his home.

CONCLUSION

If the home is not protected as a place of sanctuary, free from the contention and strife that accompany many day to day business and political activities, we will have decisions both in public and private life being made, not on the basis of personal conviction, but solely to reduce the clamor of the opposition. Citizens will be reluctant to take positions in either public or private life which are controversial for fear of the potential damage to family life and neighborhood tranquility.

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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